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CENTRAL DIST. OF CALIF.

RIVERSIDE

BY:

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

11 THE BANK OF NEW YORK                           } Case No. ED CV 12-1135-UA (DUTYx)  
12 MELLON,  
13    } Plaintiff,   }  
14    } ORDER SUMMARILY REMANDING  
15 vs.    } IMPROPERLY-REMOVED ACTION  
16 T. SCOTT DEL BUONO,                              }  
17    } Defendant.  
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The Court will remand this unlawful detainer action to state court summarily because defendant removed it improperly.

On July 9, 2012, defendant T. Scott Del Buono, having been sued in what appears to be a routine unlawful detainer action in California Superior Court, lodged a Notice of Removal of that action to this Court, and also presented an application to proceed in forma pauperis. The Court has denied the latter application under separate cover because the action was not properly removed. To prevent the action from remaining in jurisdictional limbo, the Court issues this Order to remand the action to state court.

Simply stated, plaintiff could not have brought this action in federal court in the first place, in that defendant does not competently allege facts supplying either

1 diversity or federal question jurisdiction, and therefore removal is improper. 28  
2 U.S.C. § 1441(a); *see Exxon Mobil Corp v. Allapattah Svcs., Inc.*, 545 U.S. 546,  
3 563, 125 S. Ct. 2611, 162 L. Ed. 2d 502 (2005). Here, defendant has asserted  
4 federal question jurisdiction as his basis for removal. But as described in more  
5 detail in the Order Denying Defendant's Request to Proceed Without Prepayment  
6 of Filing Fee, because the unlawful detainer action to be removed does not  
7 actually raise the federal question to which defendant points, there is no basis to  
8 assert federal question jurisdiction. *See* 28 U.S.C. §§ 1331, 1441.

9 Accordingly, IT IS ORDERED that: (1) this matter be REMANDED to the  
10 Superior Court of California, Riverside County, Southwest Justice Center,  
11 30755-D Auld Road, Murrieta, CA 92563, for lack of subject matter jurisdiction  
12 pursuant to 28 U.S.C. § 1447(c); (2) that the Clerk send a certified copy of this  
13 Order to the state court; and (3) that the Clerk serve copies of this Order on the  
14 parties.

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16  
17 DATED: 7/13/2012

*Audrey*

18 HONORABLE AUDREY B. COLLINS  
19 CHIEF UNITED STATES DISTRICT JUDGE  
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